NR 103
WATER QUALITY STANDARDS FOR WETLANDS

Wisconsin Department of Natural Resources

Permits covered by NR 103 include:

- Water Regulatory permits
- Solid Waste facility approvals
- dams approvals or permits
- highway projects which require approval
- Wetland fill projects which require Corps of Engineer's approval
- WPDES permits
- any project which requires DNR review or funding
- all DNR property activities

Summary of Rule

- Modeled after Clean Water Act
- Applies to all wetlands as defined in, s.23.32, Stats.
- Uses qualitative standards rather than quantitative standards

Wetland Standards

- NR 103
  - Mirrors 404 B-1 guidelines
  - Rigorous practicable alternative analysis
    - Functional assessment after alternatives
    - Few exceptions

Impacts of NR 103

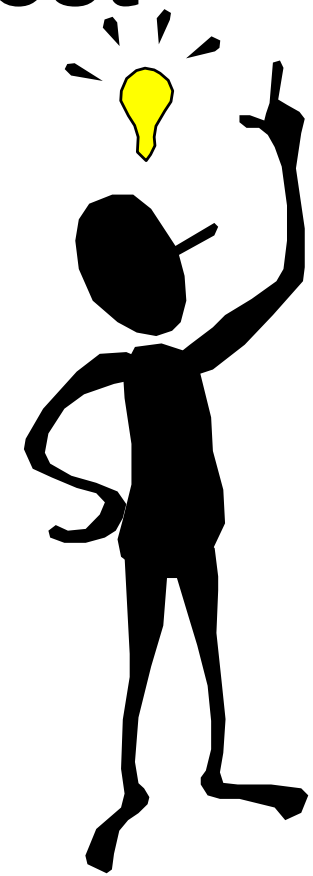
- Pre-NR 103 approximately 1440 acres of permitted wetland loss per year
- After NR 103, approximately 328 acres of permitted wetland loss
- NR 103 review process has improved planning, avoidance and minimization of wetland impacts

Wetland Cooperation

- Federal ACOE, NRCS, EPA, FWS
- State DNR
- Community
- Consultants
- Developer
- Private landowner

Applying the Practicable Alternatives Test

- Why do we use this test?
- What's practicable?
- The nitty gritty



“Water” or **“Wetland Dependency”**

The activity is of a nature that requires location in or adjacent to surface waters or wetlands to fulfill its basic purpose.

Significant Impact Analysis

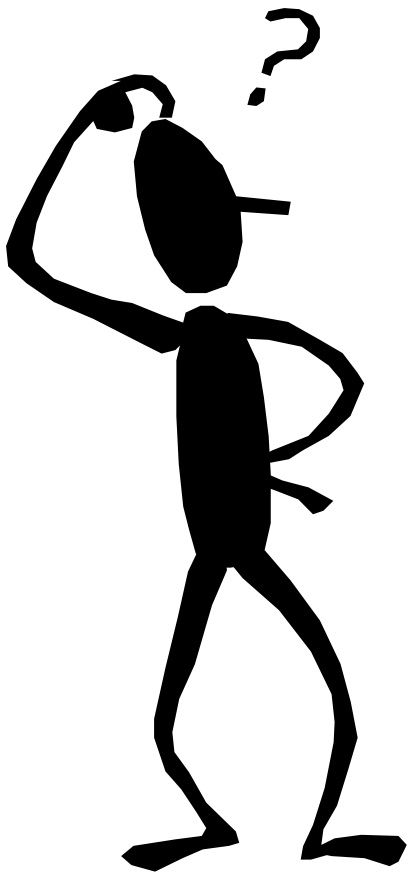
The final analysis is whether the project will result in “significant adverse impacts to the impacts to functional values of the affected wetlands, significant adverse impacts to water quality or other significant adverse environmental consequences”.

-NR103.08(3)(b)

Why Do We Use the Practicable Alternatives Test?

- It's a requirement of state and federal law
- It's a fundamental site planning tool
- It helps avoid and minimize wetland impacts

How DO We Tell What's Practicable?



- Definition
- Case law precedents

What is Practicable

- “capable of being implemented in light of logistics, cost…and the overall project purpose”
- Practicable is not always preferred by applicant

Law Principles

- Agency determines basic project purpose and whether alternatives meet the purpose
- Applicant has burden to demonstrate alternatives aren't practicable
- Agency must not be arbitrary or capricious

Law Principles

- Profitability, cost minimization, prior investment are not controlling
- Unreasonable cost may be basis for impracticability but must be judged in context of project
- Not a “taking”

Law Principles

- Agency has expertise to review whether data reasonably supports conclusions
- Agency determines whether data is from reliable source, uses accepted methods

The Nitty Gritty

- Fundamental project purpose
- Scope of alternatives
- Quality data

Basic project purpose

- Agency defines
- Must not be so narrow as to limit alternatives
  - Large strip mall on my parcel vs. gas station

Scope of alternatives

- Analyze obvious alternatives
- Use basic project purpose to scope
- Typical list:
  - Upland
  - Reduced size
  - Rearrangement (s)
  - Alternate sites
  - Construction method or time
  - No action

Quality data

- Reliable source
- Quantitative
- Comparative
- Context of project

- *What is the effect?*
- *Who is affected?*
- *How often?*
- *How many?*
- *How much $$?*

Wetland Alteration Charts

- Practicable alternative – yes → no WQC
- Practicable alternative – no
- ↓
- Wetland impact analysis
  - Adverse impact – yes → no WQC
  - Adverse impact – no → WQC granted

Wetland Alteration Charts

Process Steps (read down)	Description of the Activity				
	A. The Standard Process for activities that do not fall under Columns B through E	**B. Activity to impact an Area of Special Natural Resource Interest[3]**	**C. Activity involves wetland impact of 0.1 acre or less or activity is wetland dependent**	**D. Each of the Wetlands affected is <1 acre in size, outside the 100-year floodplain, and not on the list of certain types[4]**	**E. Cranberry Operation**
Practicable Alternatives Analysis[1]	1. Is there an **avoid** Alternative? 2. How Can Wetland impacts be **minimized**?	1. Is there an **avoid** Alternative? 2. How Can Wetland impacts be **minimized**?	1. Is there an **avoid** Alternative? 2. How Can Wetland impacts be **minimized**?	1. Is there an **avoid** Alternative? 2. How Can Wetland impacts be **minimized**?	1. Is there an **avoid** Alternative? 2. How Can Wetland impacts be **minimized**?
Functions and Values Assessment AND Compensatory Mitigation[2]	3. Evaluate Wetland Functions and values *after* alternatives test is met. 4. DNR may consider Functions and values of mitigation project if it is part of the application. 5. Applicant must show no significant adverse impacts.	3. Evaluate Wetland Functions and values *after* alternatives test is met. 4. Compensatory mitigation cannot be considered in the state decision. 5. Applicant must show no significant adverse impacts.	3. Evaluate wetland functions and values *concurrently* with alternatives to **avoid and minimize.** DNR may consider functions and values of mitigation project if it is part of the application. 4. Applicant must show no significant adverse impacts.	3. Evaluate wetland functions and values *concurrently* with alternatives to **avoid and minimize.** DNR may consider functions and values of mitigation project if it is part of the application. 4. Applicant must show no significant adverse impacts.	3. Evaluate wetland functions and values *concurrently* with alternatives to **avoid and minimize.** Alternatives for expansions limited to existing or immediately adjacent property. 4. Applicant must show no significant adverse impacts.

Wetland Cooperation

- Developer
  - Build
  - Remain flexible
  - Understand conflicting interests

Wetland Functions

- Wisconsin recognizes several wetland assessment methods
- Some methods are qualitative and some are quantitative
- Functional assessment recognizes not all wetlands are created equal

Wetland Functional Values

- Recognized in Wisconsin
  - Floral diversity
  - Wildlife
  - Fishery
  - Flood/Stormwater functions
  - Water quality
  - Shoreline anchoring
  - Groundwater recharge/discharge
  - Aesthetic/Recreation